

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

HUAWEI TECHNOLOGIES USA, INC. &
HUAWEI TECHNOLOGIES CO., LTD.,

Plaintiffs,

v.

No. 4:19-cv-159-ALM

UNITED STATES OF AMERICA,

EMILY WEBSTER MURPHY, ADMINISTRATOR OF
THE GENERAL SERVICES ADMINISTRATION,

ALEXANDER ACOSTA, SECRETARY OF LABOR,

ALEX AZAR II, SECRETARY OF HEALTH AND
HUMAN SERVICES,

BETSY DEVOS, SECRETARY OF EDUCATION,

SONNY PERDUE, SECRETARY OF
AGRICULTURE,

ROBERT WILKIE, SECRETARY OF VETERANS
AFFAIRS, &

DAVID L. BERNHARDT, SECRETARY OF THE
INTERIOR,

in their official capacities,

Defendants.

DECLARATION OF MICHAEL C. SMITH

I, MICHAEL C. SMITH, hereby declare:

I am a partner at the law firm of Siebman, Forrest, Burg & Smith, LLP in Marshall, Texas and counsel of record for plaintiffs, Huawei Technologies USA, Inc. and Huawei Technologies Co., Ltd. (collectively, Huawei), in the above-captioned case. I file this declaration to submit to the Court true and correct copies of the following publicly available materials (excerpted and with highlighting added in accordance with Local Rule CV-56(d)), which are cited in support of Huawei's contemporaneously filed motion for summary judgment:

CONGRESSIONAL AND EXECUTIVE-BRANCH RECORDS

Exhibit 1: National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 115-91, 131 Stat. 1283 § 1656 (2017).

Exhibit 2: Defending U.S. Gov't Communications Act, H.R. 4747, 115th Cong. (2018).

Exhibit 3: Defending U.S. Gov't Communications Act, S. 2391, 115th Cong. (2018).

Exhibit 4: Table of contents of the National Defense Authorization Act for Fiscal Year 2019, H.R. 5515, 115th Cong. (2018), as first introduced in the U.S. House of Representatives on April 13, 2018.

Exhibit 5: National Defense Authorization Act for Fiscal Year 2019, H.R. 5515, 115th Cong. § 866 (Chairman's Mark, May 3, 2018), following May 2018 markup sessions before the U.S. House of Representatives Committee on Armed Services.

Exhibit 6: 164 Cong. Rec. S2230 (daily ed. Apr. 18, 2018) (statement of Sen. Schumer).

Exhibit 7: 164 Cong. Rec. S2673–75 (daily ed. May 15, 2018) (statement of Sen. Rubio).

Exhibit 8: National Defense Authorization Act for Fiscal Year 2019, H.R. 5515, 115th Cong. § 880 (2018), as passed by the U.S. House of Representatives on May 24, 2018.

Exhibit 9: 164 Cong. Rec. S3362 (daily ed. June 7, 2018) (Sen. Cotton Amendment 2514 to Amendment 2282 to H.R. 5515).

Exhibit 10: Press Release, Rubio.senate.gov, *Rubio, Cotton, Van Hollen, Schumer Introduce NDAA Amendment on Huawei, ZTE*, (June 7, 2018), available at <https://tinyurl.com/y2xhbm6f> (last visited May 8, 2019).

Exhibit 11: 164 Cong. Rec. S3896–98 (daily ed. June 13, 2018) (statements of Sens. Cotton and Van Hollen).

Exhibit 12: 164 Cong. Rec. S3937–38 (daily ed. June 14, 2018) (statement of Sen. Blumenthal).

Exhibit 13: Press Release, Rubio.senate.gov, *Rubio, Banks Raise Concerns of Chinese Espionage Through University Partnerships with Huawei* (June 20, 2018), available at <https://tinyurl.com/y3ugaxsz> (last visited May 21, 2019).

Exhibit 14: 164 Cong. Rec. H5805 (daily ed. June 27, 2018) (statement of Rep. Gallego).

Exhibit 15: John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, 132 Stat. 1636 § 889 (Aug. 13, 2018).

Exhibit 16: Fall 2018 Unified Agenda, Federal Acquisition Regulation Case 2018-017, Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment, RIN 9000-AN83, available at <https://tinyurl.com/y2xscf6z> (last visited May 21, 2019).

Exhibit 17: Press Release, Jim Webb, *Sens. Webb, Kyl: Sale of U.S. Computer Technology to Chinese Firm Poses “Serious Risk”* (Feb. 10, 2011), archived in the Library of Congress Web Archives at www.loc.gov, available at <https://tinyurl.com/y2elz4sz> (last visited May 26, 2019).

MEDIA REPORTS CONCERNING HUAWEI

Exhibit 18: Ryan Browne, *Defense bill offers harsh words for Russia and China*, CNN (July 25, 2018), available at <https://tinyurl.com/yakwpwl7> (last visited May 23, 2019).

Exhibit 19: Connor O'Brien, *Senate sends \$717B defense bill to Trump*, POLITICO (Aug. 1, 2018), available at <https://tinyurl.com/ycbndlpa> (last visited May 23, 2019).

Exhibit 20: Connor O'Brien, *House passes final defense bill with limits on F-35s to Turkey, China crackdown*, POLITICO (July 26, 2018), available at <https://tinyurl.com/y56zrnus> (last visited May 23, 2019).

Exhibit 21: Chris Sanders, *'Huawei is effectively an arm of the Chinese government': US senator* REUTERS (Feb. 8, 2018), available at <https://tinyurl.com/y5egb5k2> (last visited May 23, 2019).

Exhibit 22: Heather Somerville & Jane Lanhee Lee, *U.S. universities unplug from China's Huawei under pressure from Trump*, REUTERS (Jan. 24, 2019), available at <https://tinyurl.com/y8pmetla> (last visited May 23, 2019).

Exhibit 23: Patricia Zengerle, *U.S. lawmakers set \$717 billion defence bill with eye on China, Russia, Turkey*, REUTERS (May 4, 2018), available at <https://tinyurl.com/y4uc7m3r> (last visited May 23, 2019).

Exhibit 24: Gabriella Munoz, *Marco Rubio calls Chinese company Huawei a 'Trojan horse,'* WASH. TIMES (June 13, 2018), available at <https://tinyurl.com/y3cm7ubk> (last visited May 23, 2019).

Exhibit 25: Anthony Cuthbertson, *China Can Spy on U.S. Citizens Through Their Huawei Smartphones, Spy Chief Warns*, NEWSWEEK (Feb. 14, 2018), available at <https://tinyurl.com/y2fqe53g> (last visited May 23, 2019).

Exhibit 26: Natasha Bach, *Don't Use Huawei Phones, Warn 6 Top U.S. Intelligence Chiefs*, FORTUNE (Feb. 14, 2018), available at <https://tinyurl.com/yy4th5nq> (last visited May 23, 2019).

Exhibit 27: Matt Binder, *President Trump signs NDAA, banning government use of ZTE and Huawei technology*, MASHABLE (Aug. 14, 2018), available at <https://tinyurl.com/yyxkg8df> (last visited May 23, 2019).

Exhibit 28: Timothy B. Lee, *New law bans US gov't from buying tech from Chinese giants ZTE and Huawei*, ARS TECHNICA (Aug. 14, 2018), available at <https://tinyurl.com/ydygw15j> (last visited May 23, 2019).

Exhibit 29: Steve McCaskill, *Huawei and ZTE tech banned from US government use*, TECHRADAR (Aug. 14, 2018), available at <https://tinyurl.com/yynzsau> (last visited May 23, 2019).

Exhibit 30: Joseph Marks, *Huawei, ZTE Banned in House Draft of Pentagon Policy Bill*, NEXTGOV (May 7, 2018), available at <https://tinyurl.com/y3d9krp8> (last visited May 23, 2019).

Exhibit 31: Catherine Shu, *New defense bill bans the U.S. government from using Huawei and ZTE tech*, TECHCRUNCH (Aug. 13, 2018), available at <https://tinyurl.com/y8zu9rfx> (last visited May 23, 2019).

Exhibit 32: Jacob Kastrenakes, *Trump signs bill banning government use of Huawei and ZTE tech*, THE VERGE (Aug. 13, 2018), available at <https://tinyurl.com/ybdybv53> (last visited May 23, 2019).

DOCUMENTS CONCERNING HUAWEI COMPETITORS

Exhibit 33: “Company Profile” page of Panda Electronics Group Co. Ltd.’s corporate website, *available at* <https://tinyurl.com/y2qz5qs8> (last visited May 15, 2019).

Exhibit 34: “About Us: China” page of Ericsson’s corporate website, *available at* <https://tinyurl.com/yy66p2bu> (last visited May 16, 2019).

Exhibit 35: Liu Zheng, *Ericsson preserves competitiveness on 5G development in China*, CHINA DAILY (Feb. 23, 2016), *available at* <https://tinyurl.com/y2mub8zm> (last visited May 15, 2019).

Exhibit 36: Mike Dano, *Ericsson: Things are getting better*, FIERCEWIRELESS (Nov. 8, 2018), *available at* <https://tinyurl.com/y5uj5uae> (last visited May 15, 2019).

Exhibit 37: LM Ericsson Telephone Co.’s Form 20-F Annual Report for the fiscal year ended Dec. 31, 2018, *available at* <https://tinyurl.com/y526cgvv> (last visited May 16, 2019).

Exhibit 38: Nokia Corp.’s Form 20-F Annual Report for the fiscal year ended Dec. 31, 2018, *available at* <https://tinyurl.com/y3sr267x> (last visited May 16, 2019).

Exhibit 39: Nokia Corp.’s Form 20-F Annual Report for the fiscal year ended Dec. 31, 2017, *available at* <https://tinyurl.com/y2bp626l> (last visited May 16, 2019).

Exhibit 40: China Mobile Ltd.’s Form 20-F Annual Report for the fiscal year ended Dec. 31, 2018, *available at* <https://tinyurl.com/yxucgfez> (last visited May 16, 2019).

Exhibit 41: Ryan Tracy, *FCC Denies China Mobile’s Bid to Provide International Telecom Services in the U.S.*, WALL STREET J. (May 9, 2019), *available at* <https://tinyurl.com/y3tsgab8> (last visited May 16, 2019).

Exhibit 42: “Company Overview” page of the China Telecom (Americas) corporate website, *available at* <https://tinyurl.com/y2pom87h> (last visited May 16, 2019).

Exhibit 43: China Telecom Corp. Ltd.’s Form 20-F Annual Report for the fiscal year ended Dec. 31, 2018, *available at* <https://tinyurl.com/y455qrpd> (last visited May 16, 2019).

Exhibit 44: China Unicom (Hong Kong) Ltd.’s Form 20-F Annual Report for the fiscal year ended Dec. 31, 2018, *available at* <https://tinyurl.com/yxexhnro> (last visited May 16, 2019).

Exhibit 45: Press Release, Nokia Corp., *Nokia and China Huaxin sign definitive agreements for creation of new Nokia Shanghai Bell joint venture* (May 18, 2017), *available at* <https://tinyurl.com/y4xyruvc> (last visited May 24, 2019).

Exhibit 46: Joakim Persson, *Finnish visit to Nokia Shanghai Bell*, SCANDASIA (Oct. 12, 2018), *available at* <https://tinyurl.com/y4qeoltj> (last visited May 26, 2019).

Exhibit 47: Eva Dou, *NSA Concerns Give Chinese Server Maker a Boost*, WALL STREET J. (July 29, 2014), *available at* <https://tinyurl.com/y5mx8lwh> (last visited May 16, 2019).

Exhibit 48: *PC Magazine’s* online product-overview page for Cisco Systems, Inc.’s Catalyst 3650-48P Layer 3 Switch, *available at* <https://tinyurl.com/yy6h4kq7> (last visited May 26, 2019).

Exhibit 49: Cisco Systems, Inc.’s Form 10-K Annual Report for the fiscal year ended July 30, 2016, *available at* <https://tinyurl.com/y3xbmt8w> (last visited May 16, 2019).

Exhibit 50: Hewlett Packard Enterprise Co.’s Form 10-K Annual Report for the fiscal year ended Oct. 31, 2018, *available at* <https://tinyurl.com/yxwglbdc> (last visited May 16, 2019).

Exhibit 51: Kosei Takiishi, *et al.*, *Magic Quadrant for LTE Network Infrastructure*, GARTNER (July 25, 2016), *available at* <https://tinyurl.com/y6r9n7wy> (last visited May 16, 2019).

Exhibit 52: Lenovo Group Ltd.’s 2017/18 Annual Report, *available at* <https://tinyurl.com/y6evowjb> (last visited May 16, 2019).

Exhibit 53: *USA Smartphone Market Share: By Quarter*, COUNTERPOINT RES. (Feb. 19, 2019), available at <https://tinyurl.com/yy5jdmnu> (last visited May 26 2019).

Exhibit 54: *DOD Issues Cybersecurity Warning Against Lenovo Computers, Handheld Devices*, FEDMANAGER (Oct. 25, 2016), available at <https://tinyurl.com/y769xz6y> (last visited May 16, 2019).

Exhibit 55: Caroline Finch Hockaday & Dany Jenneve, *Backgrounder*, Alcatel-Lucent Enterprise, available at <https://tinyurl.com/y4l9kmhc> (last visited May 16, 2019).

Exhibit 56: “Design Manufacturing, Service (DMS)” page of Alpha Networks, Inc.’s corporate website, available at <https://tinyurl.com/y3nl3hu8> (last visited May 26, 2019).

Exhibit 57: “About Alpha” page of Alpha Networks, Inc.’s corporate website, available at <https://tinyurl.com/yxg9apuf> (last visited May 26, 2019).

Exhibit 58: Arista Networks, Inc.’s Form 10-K Annual Report for the fiscal year ended Dec. 31, 2018, available at <https://tinyurl.com/y69sjltp> (last visited May 16, 2019).

Exhibit 59: Extreme Networks, Inc.’s Form 10-K Annual Report for the fiscal year ended June 30, 2018, available at <https://tinyurl.com/y4zsumpa> (last visited May 16, 2019).

Exhibit 60: Juniper Networks, Inc.’s Form 10-K Annual Report for the fiscal year ended Dec. 31, 2018, available at <https://tinyurl.com/y3ezn2pk> (last visited May 24, 2019).

Exhibit 61: Ryan Whitwam, *OnePlus Breaks Into Top 5 Premium Phone Makers in US Market*, EXTREMETECH (Feb. 12, 2019), available at <https://tinyurl.com/y2t46crp> (last visited May 22, 2019).

Exhibit 62: Robert Triggs, *Who is BBK, the world’s third largest phone manufacturer?*, ANDROIDAUTHORITY (Oct. 20, 2017), available at <https://tinyurl.com/y8bh8e3z> (last visited May 26, 2019).

Exhibit 63: Li Tao, *Meet the ‘godfather’ of China’s smartphone industry*, SOUTH CHINA MORNING POST (Feb. 4, 2019), *available at* <https://tinyurl.com/yd9a4n6w> (last visited May 22, 2019)

Exhibit 64: Eva Dou & Yang Jie, *China’s Tsinghua Unigroup to Build \$30 Billion Memory-Chip Factory in Nanjing*, WALL STREET J. (Jan. 19, 2017), *available at* <https://tinyurl.com/y3xu36kb> (last visited May 22, 2019).

Exhibit 65: “Products and Technological Services” page of Tsinghua Holdings Co. Ltd.’s corporate website, *available at* <https://tinyurl.com/y64nfcpk> (last visited May 22 2019).

Exhibit 66: Yujing Liu, *Shenzhen government takes control of China’s leading chip maker Tsinghua Unigroup*, SOUTH CHINA MORNING POST (Oct. 26, 2018), *available at* <https://tinyurl.com/yybb6xok> (last visited May 22, 2019).

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on: May 28, 2019.

/s/ Michael C. Smith
Michael C. Smith
TX Bar No. 18650410